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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-sixth session

SUMMARY RECORD OF THE 35th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 25 August 1994, at 3 p.m.

Chairman: Mrs. ATTAH

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Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII) (continued)

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The meeting was called to order at 3.10 p.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued)

(E/CN.4/Sub.2/1994/L.23, L.25, L.26, L.28, L.31/Rev.1, L.32, L.34/Rev.1, L.36-L.41)

Draft resolution on the situation of human rights in Iraq
(E/CN.4/Sub.2/1994/L.23)

1. Mrs. PALLEY said that when, a few years previously, the situation in Iraq had been examined by the Sub-Commission, the Government had invited Sub-Commission members to visit the country. At that time she had made some rude remarks to the effect that if Stalin had invited them to Russia during his rule, he would not have taken them to the gulag; those remarks had offended the Government of Iraq, and the Sub-Commission had then resolved that the Sub-Commission as such should not accept the invitation, leaving individual members free to do what their consciences dictated without their decisions being a matter for the Sub-Commission collectively. Should a similar suggestion be made by the Iraqi Government or any other Government, the Sub-Commission should adhere to that earlier decision on official visits. It was difficult enough for Special Rapporteurs to investigate properly; the Sub-Commission was totally unequipped for such a task. Invitations to visit States whose situations were being examined were designed to appeal to Sub-Commission members' wish to have a dialogue with Governments to help improve the situation. The proper course was for Governments to cooperate with the machinery established by the Commission on Human Rights, namely with special and thematic rapporteurs. It was not proper for Governments to try to flatter the Sub-Commission into adopting an alternative procedure, which was a tactical and procedural whitewash. She hoped no other Government would do as Iraq had done.

2. The CHAIRMAN asked if Mrs. Palley was referring to Indonesia's invitation addressed to the Chair that morning, given that her statement had nothing to do with the draft resolution under consideration. She was not aware of any guidelines or rules of the sort Mrs. Palley had mentioned.

3. Mr. HUSSAIN (Observer for Iraq) said that the draft resolution submitted by Western members of the Sub-Commission reflected Security Council resolutions 688 (1991), 706 (1991) and 712 (1991) which had nothing to do with human rights and represented interference in the internal affairs of Iraq. As to Iraqi cooperation with the Special Rapporteur and the sending of human rights observers, his country would continue to respond to the questions of the Special Rapporteur, but he was not objective. The allegations concerning Iraq's use of chemical weapons in the Marshes had been disproved by the United Nations. That information had come from Iran. Sub-Commission members were pretending not to know that the Kurdistan region was no longer under the central authority of Iraq because of the action taken by some Western States. As to the lack of electricity, that applied to the entire country and was due to the embargo on importing spare parts and equipment. He expressed surprise

at the reference to an "internal embargo"; his Government was continuing to attempt to deliver supplies to its Kurdish people but they were immediately sold on the market and the proceeds from their sale were distributed among the belligerent groups.

4. The draft resolution before the Sub-Commission was an attempt to strangle Iraq. The question of human rights had not been examined objectively but had been subjected to political considerations. The embargo was a crime of genocide, yet it was not mentioned in the draft text. The draft was based on incorrect information and third world countries should address its real nature, namely, that it represented interference in Iraq's internal affairs. If such interference persisted, it would eventually affect all third world countries.

5. The CHAIRMAN invited the Sub-Commission to vote on the draft resolution.

6. A vote was taken by secret ballot.

7. At the invitation of the Chairman, Mr. Yimer and Ms. Daes acted as tellers.

8. Draft resolution E/CN.4/Sub.2/1994/L.23 was adopted by 14 votes to 7, with 3 abstentions and 1 member not participating.

Draft decision on the humanitarian situation in Iraq

9. Mrs. WARZAZI said she had circulated an updated version of Sub-Commission decision 1992/106 on the humanitarian situation in Iraq. The text which she proposed for adoption was the following:

> "At its ... meeting, on ..., the Sub-Commission, recalling the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the relevant provisions of the Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto, recalling also its previous resolutions on Iraq and the Declaration of Minimum Humanitarian Standards contained in its resolution E/CN.4/Sub.2/1994/22, deeply concerned about the serious consequences which the embargo imposed on Iraq for the past four years is having on the entire civilian population in Iraq and, in particular, on children, women and the most underprivileged population sectors, decides, without a vote, to appeal once again to the international community as a whole and to all Governments, including that of Iraq, to facilitate the supply of food and medicines to the civilian population."

10. Mr. JOINET said that, since the humanitarian situation in Iraq had not changed and the same causes and effects were operating, he supported Mrs. Warzazi's proposal.

11. The draft decision was adopted without a vote.

Draft resolution on the situation in Indonesia (E/CN.4/Sub.2/1994/L.25)

12. Mr. FAN Guoxiang said that, from reading the reports referred to in the draft text and on the basis of other information, he had serious doubts as to whether the actions prescribed by the operative paragraphs were warranted. The documentation referred to concerned many countries; singling out one country was unjustified. Furthermore, there had already been a draft text on the situation in East Timor, and targeting a country with two draft texts would complicate and overburden the Sub-Commission's work, as well as setting a dangerous precedent. He therefore asked for a vote to be taken on the draft resolution.

13. Mr. BROTODININGRAT (Observer for Indonesia) quoted remarks made a few days previously by the Princess of Wales: "... simply untrue and so unfair. What have I done to deserve this?" Of course, that statement had been made in an entirely different context and for a totally different purpose, but he thought that those words could also be applied to the draft resolution before the Sub-Commission.

14. A vote was taken by secret ballot.

15. At the invitation of the Chairman, Mr. Bengoa and Mr. Guissé acted as tellers.

16. Draft resolution E/CN.4/Sub.2/1994/L.25 was rejected by 14 votes to 7, with 3 abstentions and 1 member not participating.

Draft resolution on violation of the human rights of staff members of the United Nations system and other persons acting under the authority of the United Nations (E/CN.4/Sub.2/1994/L.26)

17. The CHAIRMAN, remarking that the draft resolution concerned a very serious matter, said she would take it that the Sub-Commission wished to adopt the draft text by consensus.

18. It was so decided.

Draft resolution on the situation of human rights in the Islamic Republic of Iran (E/CN.4/Sub.2/1994/L.28)

19. Mr. ALAEE (Observer for the Islamic Republic of Iran) said that his Government had consistently voiced its full readiness to establish meaningful cooperation in order to contribute to the promotion of human rights at the national and international levels. That cooperation extended to the Sub-Commission's resolutions on the question of human rights in the Islamic Republic of Iran, which called for the holding of purposeful dialogue to examine all aspects of the issue. His country did not claim to be perfect in that regard. Obviously, all States, large and small, irrespective of their tendencies, needed to be assisted in their endeavours to protect human rights and fundamental freedoms. That might even imply the adoption of a balanced resolution solely for the purpose of assisting a given country to improve the situation there.

20. However, the draft resolution now before the Sub-Commission was full of exaggerated perceptions which were based not on real evidence but on rumour and gossip. It went far beyond the reports presented by the Special Representative of the Commission. The views expressed in the draft revealed a sense of animosity towards his country and not a knowledge and recognition of the facts and merits of the situation. Partiality was evident in the failure of some of the drafters even to condemn terrorist activities by groups and individuals who had become their friends. The invitation his country had extended to the Sub-Commission for the current year would be reconsidered for the next session. There should be a greater awareness of the realities in his country and a realization of the extent of damage caused by terrorist groups who had so far been the main source of information for the sponsors of the resolutions on his country.

21. A vote was taken by secret ballot.

22. At the invitation of the Chairman, Ms. Ferriol Echevarría and Ms. Chavez acted as tellers.

23. Draft resolution E/CN.4/Sub.2/1994/L.28 was adopted by 15 votes to 6, with 3 abstentions and 1 member not participating.

Draft resolution on the situation in Burundi (E/CN.4/Sub.2/1994/L.31/Rev.1)

24. Mrs. GWANMESIA drew attention to an error in the eighth preambular paragraph, in which "cultural values" should read "agricultural production".

25. Mr. EL-HAJJE and Mr. BOSSUYT said that they wished to become sponsors of the draft resolution as corrected.

26. Draft resolution E/CN.4/Sub.2/1994/L.31/Rev.1, as corrected, was adopted without a vote.

Draft resolution on the situation in the Palestinian and other Arab territories occupied by Israel (E/CN.4/Sub.2/1994/L.32)

27. Mr. EL-HAJJE, introducing the draft resolution, said that it took account of recent developments resulting from the Madrid talks, while affirming the rights of the inhabitants of the occupied West Bank and the Syrian Golan and emphasizing the need to apply the relevant international humanitarian conventions in the territories occupied by Israel. It condemned Israel's refusal to apply the provisions of the Geneva Conventions in those territories, the repeated violations of those instruments by Israeli occupying forces, the policy of resettlement, the continuing occupation of the Syrian Golan and the inhuman treatment of its inhabitants by the occupying forces. The sponsors hoped that the draft resolution would be adopted by consensus.

28. Mrs. PALLEY said that she would have welcomed a draft resolution which could have been adopted by consensus. However, she could not accept the draft resolution before the Sub-Commission because its language in places was too extreme.

29. Mr. BOSSUYT, noting said that the Sub-Commission had already adopted one draft resolution on the situation in the Middle East (document E/CN.4/Sub.2/1994/L.21), moved that no action should be taken on draft resolution E/CN.4/Sub.2/1994/L.32.

30. Mr. FAN Guoxiang said that, while the advances being made in the Middle East peace process were very encouraging, still more progress would be made if the Security Council resolutions referred to in the draft resolution were implemented, and it seemed entirely appropriate at the current juncture to call on Israel to honour its obligations and withdraw its forces from the occupied Arab territories. He supported the draft resolution and hoped it could be adopted without a vote.

31. Mr. KHALIL, supported by Ms. FERRIOL ECHEVARRÍA, said that draft resolutions E/CN.4/Sub.2/1994/L.21 and L.32 addressed different aspects of the situation in the Middle East: the former concerned the continuing peace process, while the latter concerned specific violations of international agreements which were still occurring and merited separate consideration. He was in favour of adopting draft resolution E/CN.4/Sub.2/1994/L.32.

32. Ms. CHAVEZ supported the motion to take no action on the draft resolution under discussion, and said that, if a vote were taken, she would not support its adoption. The draft resolution was not a balanced document, since it took no account of human rights violations by groups such as Hezbollah which appeared to be uninterested in achieving peace. Furthermore, the Sub-Commission should not allow itself to be used by a Government as a means of furthering national political interests when it might more properly seek a constructive involvement in the negotiations with Israel.

33. The CHAIRMAN invited the Sub-Commission to vote on the motion to take no action on the draft resolution.

34. At the invitation of the Chairman, Mr. Zhong Shukong and Mr. Fix Zamudio acted as tellers.

35. A vote was taken by secret ballot.

36. The motion to take no action on draft resolution E/CN.4/Sub.2/1994/L.32 was approved by 12 votes to 10, with 1 abstention.

Draft resolution on human rights and terrorism (E/CN.4/Sub.2/1994/L.34/Rev.1)

37. Ms. CHAVEZ and Mr. EIDE said that they wished to become sponsors of the draft resolution.

38. Mr. GUISSÉ, supported by Mrs. PALLEY, suggested that the words "in all its forms" should be inserted after the word "terrorism" in paragraph 2.

39. Mr FAN Guoxiang said that he supported the proposed change in principle, since it would reflect the wording of the Vienna Declaration and Programme of Action (part I, para. 17) referred to in the third preambular paragraph. However, the addition might better be made in paragraph 1, after the word "terrorism".

40. Mr. KHALIL, supported by Mr. KHAN, pointed out that the wording of paragraph 1 appeared to be comprehensive and it was unnecessary to spell out everything which had already been said in the previous relevant texts cited in the preamble. The proposed addition to paragraph 2 therefore appeared to be redundant.

41. Mrs. GWANMESIA, supported by Mr. CHERNICHENKO, said that the proposed addition was not only unnecessary, since everyone knew what the term "terrorism" meant, but might even introduce a degree of ambiguity.

42. Mr. JOINET agreed that it was important to avoid ambiguity or any possible conflict with existing provisions of international law which recognized the legitimacy of certain kinds of armed struggle. The current wording of paragraph 1 rightly excluded legitimate forms of armed struggle aimed at establishing democratic rights, and should therefore be left unchanged.

43. Mr. GUISSÉ withdrew his proposal.

44. Draft resolution E/CN.4/Sub.2/1994/L.34/Rev.1 was adopted without a vote.

Draft resolution on the situation of human rights in Chad
(E/CN.4/Sub.2/1994/L.36)

45. Mrs. GWANMESIA moved that no action should be taken on the draft resolution, in accordance with the principle that no one should be punished twice for the same offence.

46. After a brief discussion on the applicability of such a principle in the current circumstances, in which Mr. YIMER, Mrs. FORERO UCROS, Mr. JOINET, Ms. FERRIOL ECHEVARRÍA, Mr. BOSSUYT, Mrs. PALLEY, Mrs. WARZAZI, Mr. CHERNICHENKO and Mr. EIDE took part, the CHAIRMAN invited the Sub-Commission to vote on Mrs. Gwanmesia's motion.

47. A vote was taken by secret ballot.

48. At the invitation of the Chairman, Mr. Boutkevitch and Mrs. Palley acted as tellers.

49. The motion to take no action on the draft resolution was rejected by 13 votes to 10, with 2 abstentions.

50. The CHAIRMAN requested information on the financial implications of the draft resolution.

51. Mr. CISSE (Centre for Human Rights) said that, if the Sub-Commission were to endorse the recommendation contained in paragraph 3, an appropriate statement of financial implications would be submitted to the Commission on Human Rights at the time when it took action on the draft resolution.

52. The CHAIRMAN invited the Sub-Commission to vote on the draft resolution.

53. A vote was taken by secret ballot.

54. At the invitation of the Chairman, Mr. Boutkevitch and Mrs. Palley acted as tellers.

55. Draft resolution E/CN.4/Sub.2/1994/L.26 was adopted by 18 votes to 6, with 1 abstention.

Draft resolution on the situation of human rights in Togo (E/CN.4/Sub.2/1994/L.37)

56. Mr. FAN Guoxiang drew attention to a mistake in the Sub-Commission's title at the beginning of the draft resolution.

57. The CHAIRMAN requested the Secretariat to take note of that point.

58. A vote was taken by secret ballot.

59. At the invitation of the Chairman, Mr. Hatano and Mr. Joinet acted as tellers.

60. Draft resolution E/CN.4/Sub.2/1994/L.37 was adopted by 20 votes to 4, with 1 abstention.

Draft resolution on the situation in Bougainville (E/CN.4/Sub.2/1994/L.38)

61. Mrs. PALLEY announced that the sponsors wished to make two small revisions. First, the last part of paragraph 5, starting with the words "and also", should be replaced by the words "and to cooperate with them to enable them to fulfil their mandates". Second, paragraph 6 should be replaced by a paragraph reading: "Expresses its appreciation of resolution 1994/81 adopted by the Commission on Human Rights, in which the Secretary-General was requested to consider the appropriateness of appointing a special representative concerning the human rights situation in Bougainville."

62. The draft resolution, as orally revised, was adopted without a vote.

Draft resolution on violations of human rights of "enclaved groups" (E/CN.4/Sub.2/1994/L.39)

63. Mrs. WARZAZI asked Ms. Daes to explain exactly what was meant by "enclaved groups".

64. Ms. DAES replied that, in a statement which she had made in the debate on agenda item 6, she had mentioned a particular situation in which the rights of the "enclaved" were being seriously violated. Other members of the Sub-Commission had referred to other similar situations. Since the position of "enclaved groups" was often worse than that of minorities, the draft resolution requested the expert on minorities, Mr. Eide, to study also the issues and situations relating to "enclaved groups".

65. Mr. YIMER said that, despite Ms. Daes' explanation, he still did not understand what was meant by "enclaved groups" or why the term was placed in inverted commas. Perhaps Ms. Daes could give some examples.

66. Ms. DAES gave as an example the situation of the Greeks living in the Turkish-occupied part of Cyprus.

67. Mr. JOINET suggested that, given the large number of draft resolutions, it might be better to include the issue of "enclaved groups" in another draft resolution relating to Mr. Eide's mandate.

68. Mr. MAXIM agreed with Mr. Joinet that there was no need for a separate resolution on the subject. Mr. Eide could include a chapter on it in his analytical report on minorities.

69. Mr. CHERNICHENKO said that he had no problem with the draft resolution as such. However, the term "enclaved groups" worried him. The example given by Ms. Daes referred to a national minority, and he wondered whether the Russians living in Latvia and Estonia would also be covered by the concept. In any case, Mr. Eide could be requested to include the topic in his report.

70. Mr. EIDE said that, if he undertook the task being proposed, he would have to analyse what kind of issues might arise and their consequences. It was a complex matter that required conceptual clarification.

71. Mrs. PALLEY said that, as she understood it, the expression "enclaved groups" applied to people who had been isolated as a result of internal disturbances or invasion. Such a situation existed in Nagorny Karabakh and Ceylon.

72. Mr. EIDE said that, in order to avoid confusion, he might prepare a working paper on the subject for consideration by the Sub-Commission at its next session. The Sub-Commission could then address the problem in a comprehensive way.

73. Ms. DAES stressed that the Sub-Commission must give a clear mandate to Mr. Eide.

74. Following a brief discussion in which the CHAIRMAN, Mrs. GWANMESIA, Mrs. WARZAZI and Mr. JOINET took part, Mr. EIDE formally proposed that the Sub-Commission should leave aside the draft resolution and adopt a decision under item 18 requesting him to prepare a working paper on the concept of enclaved groups.

75. It was so decided.

Draft resolution on the situation of human rights in Guatemala
(E/CN.4/Sub.2/1994/L.40)

76. Mr. JOINET said that the draft resolution had required a great deal of consultation. He therefore hoped that it would be adopted without a vote.

77. Mr. EIDE, while endorsing Mr. Joinet's remarks, proposed two amendments. The first involved the addition of a new fourth preambular paragraph reading: "Welcoming the measures adopted by the President in order to strengthen democracy and the rule of law;". Secondly, the phrase "within the framework of the peace agreements" should be inserted at the end of paragraph 8.

78. The CHAIRMAN asked whether the word "Government" or, rather, the word "President" should be used in Mr. Eide's first amendment.

79. Mr. EIDE said that it was the President who had taken many of the initiatives. In his view it would be useful to make explicit mention of that fact.

80. Ms. CHAVEZ and Mr. GUISSÉ supported Mr. Eide's proposed amendments but said they would prefer to use the word "Government" instead of "President", so as not to personalize the matter.

81. Mr. FIX ZAMUDIO said that he would prefer the word "President", as what had been achieved largely represented a personal effort on the part of the President.

82. Mrs. WARZAZI remarked that there was a lack of balance in the preamble, which referred to complaints about human rights violations by members of the armed forces and the security forces as well as the so-called voluntary civil self-defence committees but failed to mention the violations undoubtedly committed by the revolutionary movement.

83. Mrs. FORERO UCROS said that she strongly supported Mr. Eide's amendments.

84. Mr. JOINET stated that, if the Sub-Commission wanted to make particular mention of the President, he would be prepared to go along with that decision, but he personally thought that the term "Government" would be better.

85. He suggested that the following wording of the eleventh preambular paragraph might be acceptable to the Sub-Commission: "Concerned that there continue to be complaints about human rights violations, despite the signing of the agreements, frequently attributed to members of the armed forces and the security forces, as well as the so-called voluntary civil self-defence committees and certain members of the URNG;".

86. Mr. EIDE said that he was prepared to accept "Government" instead of "President" in order to reach a consensus.

87. Following a brief discussion in which Mr. JOINET, Mr. BENGOA, Mr. LINDGREN, Ms. FERRIOL ECHEVARRÍA, Mrs. WARZAZI and Mr. EIDE took part, Mr. JOINET said that, in a last attempt to reach consensus, he was prepared to accept the following wording for the eleventh preambular paragraph: "Concerned that there continue to be complaints about human rights violations, whatever the source of the violations".

88. Draft resolution E/CN.4/Sub.2/1994/L.40, as amended, was adopted without a vote.

Draft resolution on the situation of human rights in Haiti
(E/CN.4/Sub.2/1994/L.41)

89. Mr. BENGOA said that the draft resolution had resulted from extensive consultations and he therefore hoped that it would be adopted by consensus.

90. He wished to propose amendments to the preamble and to paragraphs 7 and 10. The last phrase of the penultimate preambular paragraph should be amended to read "by the different organs of the United Nations system". Paragraph 10 should be deleted and merged with paragraph 7, which would then read:

> "7. Expresses the hope that the good offices mission being prepared by a group of Latin American countries will be successful and thus enable the United Nations Mission in Haiti to be deployed with the objective of cooperating with the lawful authorities for the professionalization of the army, the creation of a separate police force and the setting up of the necessary structures to guarantee the country a climate for the establishment of democracy, measures adopted under the Governors Island Agreement."

The point of the amendments was to promote all forms of peaceful settlement in Haiti and particularly to welcome the United Nations Mission and the efforts of the Latin American countries that were trying to mediate.

91. Draft resolution E/CN.4/Sub.2/1994/L.41, as amended, was adopted by consensus.

The meeting rose at 6.05 p.m.